

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA IMMEDIATE

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C O N F I D E N T I A L STATE 177774

MANILA FOR USDEL, CINCPAC ALSO FOR POLAD

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT:PHILIPPINE BASE NEGOTIATIONS: RESPECT FOR
PHILIPPINE LAW

REF: MANILA 10140

1. WORKING PAPER SET FORTH REFTTEL PRESENTS NO PROBLEM HERE
EXCEPT FOR PARA 3 (AND POSSIBLY PARA 2 AS SET FORTH PARA 4
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BELOW). WE SUGGEST FOLLOWING REDRAFT OF PARA 3 FOR WHICH

WE INCLUDE TWO ALTERNATIVE FIRST SENTENCES, AS EXPLAINED IN
PARA 3 BELOW:

(THE U.S. RECOGNIZES THAT PHILIPPINE LAW APPLIES
INSIDE THE FACILITIES DESIGNATED FOR ITS USE, EXCEPT TO THE
EXTENT THAT PARTICULAR EXEMPTIONS ARE EXPRESSED IN, OR
IMPLIED BY, AGREEMENTS BETWEEN THE TWO GOVERNMENTS, AND
WITHOUT PREJUDICE TO ANY RIGHTS OR IMMUNITIES TO WHICH THE
U.S. IS ENTITLED AS A SOVEREIGN STATE UNDER INTERNATIONAL
LAW.)

(THE UNITED STATES GOVERNMENT RECOGNIZES THAT
PHILIPPINE LAW APPLIES INSIDE THE FACILITIES DESIGNATED
FOR USE BY U.S. FORCES EXCEPT TO THE EXTENT THAT PARTICULAR
EXEMPTIONS ARE EXPRESSED IN OR IMPLIED BY AGREEMENTS IN
FORCE BETWEEN THE TWO GOVERNMENTS, OR TO THE EXTENT A
PARTICULAR APPLICATION MAY BE INCONSISTENT WITH INTERNATIONAL
LAW.) SPECIFIC QUESTIONS OF APPLICABILITY OF PHILIPPINE LAW
WILL BE RESOLVED IN ACCORDANCE WITH INTERNATIONAL LAW AND
WITH DUE RESPECT FOR THE CUSTOMS AND PRACTICES OF SOVEREIGN
STATES IN LIKE CIRCUMSTANCES AND SPECIAL REQUIREMENTS NEEDED
TO ENSURE OPERATIONAL EFFECTIVENESS OF MILITARY FORCES.

2. REASONS FOR CHANGES PARA 3 DRAFT WORKING PAPER ARE TO:

A. INCLUDE EXEMPTIONS WHICH MAY BE AGREED TO OUTSIDE
OF THE BASES AGREEMENT AND

B. TO PRESERVE OUR POSITION UNDER INTERNATIONAL LAW,
PARTICULARLY WITH RESPECT TO INTERNATIONAL LAW LIMITATION
UPON PHILIPPINE AUTHORITY TO PRESCRIBE LAWS AFFECTING
FOREIGN SOVEREIGNS AND ALSO DEFENSE OF SOVEREIGN IMMUNITY
IN APPROPRIATE CASES.

3. USDEL WILL NOTE THAT FIRST OF ALTERNATIVE FORMULATIONS
PARA ONE ABOVE FOR FIRST SENTENCE OF PARA THREE OF YOUR
WORKING PAPER IS MORE EXPLICIT THAN SECOND FORMULATION
CONCERNING SOVEREIGN RIGHTS AND IMMUNITIES. HOWEVER, IF
USDEL CONSIDERS IT PREFERABLE TO TABLE SECOND ALTERNATIVE
FORMULATION FOR PARA ONE ABOVE, YOU ARE AUTHORIZED TO DO SO.
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IN THAT EVENT, IT SHOULD BE MADE CLEAR TO PHILS THE PURPOSE
OF OUR REDRAFT, AS STATED PARA TWO B. ABOVE.

4. REGARDING PARA TWO OF YOUR DRAFT WORKING PAPER, ASSUME
PHILS ARE UNDER NO ILLUSION THAT REFERENCE TO PHIL SOV-
EREIGNTY QUOTE OVER ALL THE TERRITORY OF THE PHILIPPINES
UNQUOTE IN ANY WAY IMPLIES U.S. ACQUIESCENCE IN PHILIPPINE
ARCHIPELAGIC CLAIMS OR CLAIMS TO DISPUTED TERRITORY. IF

YOU FEEL THERE MAY BE SOME RISK OF THIS, YOU SHOULD CON-
SIDER ALTERNATIVE FORMULATION OF FIRST SENTENCE OF PARA TWO
OF WORKING PAPER AS FOLLOWS: QUOTE THE U.S. RECOGNIZES THAT
THE SOVEREIGNTY OF THE PHILIPPINES OVER ITS TERRITORY
EXTENDS TO THE FACILITIES WITHIN PHILIPPINE MILITARY BASES
WHICH HAVE BEEN DESIGNATED FOR U.S. USE UNQUOTE. KISSINGER

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